(4) Beginning August 30, 2004, for NRLM diesel fuel and diesel fuel additives subject to the 15 ppm standard of §80.510(b), sulfur content may be determined using any test method approved under §80.585.

(c) *Alternative test methods for sulfur.* (1) Until December 27, 2004, for motor vehicle diesel fuel and diesel fuel additives subject to the 15 ppm standard of §80.520(a)(1), sulfur content may be determined using ASTM D 5453–03a or ASTM D 3120–03a, provided that the refiner or importer test result is correlated with the appropriate method specified in paragraph (a)(2) of this section.

(2) *Options for testing sulfur content of 500 ppm diesel fuel.* (i) For motor vehicle diesel fuel and diesel fuel additives subject to the 500 ppm sulfur standard of §80.520(c), and for NRLM diesel fuel subject to the 500 ppm sulfur standard of §80.510(a), sulfur content may be determined using ASTM D 4294–03, ASTM D 5453–03a, or ASTM D 6428–99, provided that the refiner or importer test result is correlated with the appropriate method specified in paragraph (a)(2)(ii) of this section; or

(ii) For motor vehicle diesel fuel and diesel fuel additives subject to the 500 ppm sulfur standard of §80.520(c), and for NRLM diesel fuel subject to the 500 ppm sulfur standard of §80.510(a), sulfur content may be determined using any test method approved under §80.585.

(d) *Adjustment Factor for downstream test results.* An adjustment factor of negative two ppm sulfur shall be applied to the test results, to account for test variability, but only for testing of motor vehicle diesel fuel or NRLM diesel fuel identified as subject to the 15 ppm sulfur standard of §80.510(b) or §80.520(a)(1).

(e) *Materials incorporated by reference.* The Director of the Federal Register approved the incorporation by reference of the documents listed in this section as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal__register/code__of__federal__regulations/ibr__locations.html.*

(1) *ASTM material.* Anyone may purchase copies of these materials from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428.

(i) ASTM D 2622–03, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry.

(ii) ASTM D 3120–03a, Standard Test Method for Trace Quantities of Sulfur in Light Liquid Petroleum Hydrocarbons by Oxidative Microcoulometry.

(iii) ASTM D 4294–03, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.

(iv) ASTM D 5453–03a, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Motor Oils by Ultraviolet Fluorescence.

(v) ASTM D 6428–99, Test Method for Total Sulfur in Liquid Aromatic Hydrocarbons and Their Derivatives by Oxidative Combustion and Electrochemical Detection.

(2) [Reserved]

§80.581 What are the batch testing and sample retention requirements for motor vehicle and NRLM diesel fuel?

(a) Beginning on June 1, 2006 or earlier pursuant to §80.531 for motor vehicle diesel fuel, and beginning June 1, 2010 or earlier pursuant to §80.535 for NRLM diesel fuel, each refiner and importer shall collect a representative sample from each batch of motor vehicle or NRLM diesel fuel produced or imported and subject to the 15 ppm sulfur content standard. Batch, for the purposes of this section, means batch as defined under §80.2 but without the reference to transfer of custody from one facility to another facility.

(b) Except as provided in paragraph (c) of this section, the refiner or importer shall test each sample collected pursuant to paragraph (a) of this section to determine its sulfur content for compliance with the requirements of this subpart prior to the diesel fuel leaving the refinery or import facility, using an appropriate sampling and testing method as specified in §80.580.

(c)(1) Any refiner who produces motor vehicle or NRLM diesel fuel using computer-controlled in-line blending equipment, including the use of an on-line analyzer test method that is approved under the provisions of §80.580, and who, subsequent to production of the diesel fuel batch tests a composited sample of the batch under the provisions of §80.580 for purposes of designation and reporting, is exempt from the requirement of paragraph (b) of this section to obtain the test result required under this section prior to the diesel fuel leaving the refinery, provided that the refiner obtains approval from EPA.

(2) To obtain an exemption from paragraph (b) of this section, the refiner must submit to EPA all the information required under §80.65(f)(4)(i)(A). A letter signed by the president, chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the submission is true to the best of his/her belief must accompany any submission under this paragraph (c)(2).

(3) Refiners who seek an exemption under paragraph (c)(2) of this section must comply with any request by EPA for additional information or any other requirements that EPA includes as part of the exemption.

(4) Within 60 days of EPA's receipt of a submission under paragraph (c)(2) of this section, EPA will notify the refiner if the exemption is not approved or of any deficiencies in the refiner's submission, or if any additional information is required or other requirements are included in the exemption pursuant to paragraph (c)(3) of this section. In the absence of such notification from EPA, the effective date of an exemption under this paragraph (c) is 60 days from EPA's receipt of the refiner's submission.

(5) EPA reserves the right to modify the requirements of an exemption under this paragraph (c), in whole or in part, at any time, if EPA determines that the refiner's operation does not effectively or adequately control, monitor or document the sulfur content of the refinery's diesel fuel production, or if EPA determines that any other circumstances exist which merit modification of the requirements of an exemption, such as advancements in the state of the art for in-line blending measurement which allow for additional control or more accurate monitoring or documentation of sulfur content. If EPA finds that a refiner provided false or inaccurate information in any submission required for an exemption under this section, upon notification from EPA, the refiner's exemption will be void *ab initio.*

(d) All test results under this section shall be retained for five years and must be provided to EPA upon request.

(e) Samples collected under this section must be retained for at least 30 days and provided to EPA upon request.

[69 FR 39184, June 29, 2004]

EFFECTIVE DATE NOTE: At 69 FR 39184, June 29, 2004, §80.581 was added, effective Aug. 30, 2004.

§80.582 What are the sampling and testing methods for the fuel marker?

For heating oil and NRLM diesel fuel subject to the fuel marker requirement in §80.510(d), (e), or (f), the identification of the presence and concentration of the fuel marker in diesel fuel may be determined using the test procedures qualified in accordance with the requirements in this section.

(a) *Sampling and testing for methods for the fuel marker.* The sampling, sample preparation, and testing methods qualified for use in accordance with the requirements of this section may involve the use of hazardous materials, operations and equipment. This section does not address the associated safety problems which may exist. It is the responsibility of the user of the procedures specified in this section to establish appropriate safety and health practices prior to their use. It is also the responsibility of the user to dispose of any byproducts which might result from conducting these procedures in a manner consistent with applicable safety and health requirements.

(b) *What are the precision and accuracy criteria for qualification of fuel marker test methods?* (1) *Precision.* A standard deviation of less than 0.10 milligrams per liter is required, computed from the results of a minimum of 20 repeat tests made over 20 days on samples taken from a homogeneous commercially available diesel fuel which meets the applicable industry consensus and federal regulatory specifications and which contains the fuel marker at a concentration in the range of 0.10 to 8 milligrams per liter. In order to qualify, the 20 results must be a series of tests on the same material and there must be a sequential record of the analysis with no omissions. A laboratory facility may exclude a given sample or test result only if the exclusion is for a valid reason under good laboratory practices and it maintains records